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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

TEAMSTERS LOCAL NO. 243,
affiliated with THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,
Petitioner,

vs.

SEARS, ROEBUCK AND COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Where an arbitrator interpreted the language of a labor agreement as codifying a restriction on subcontracting recognized by the arbitral common law, may a court vacate the arbitrator's award because the court interprets the "plain meaning" of the language differently?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner Teamsters Local No. 243 prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in the above case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 683 F. 2d 1095 (*infra* pp. A-1-5). The Order and Opinion of the United States District Court for the Eastern District of Michigan (*infra,* pp. A-69-78) is not reported. Nor is the arbitrator's decision and award (*infra,* pp. A-7-69).

JURISDICTION

The judgment of the Court of Appeals (*infra*, pp. A-1-5) was entered on July 16, 1982. On September 13, 1982 the Court of Appeals denied the petition for rehearing of Teamsters Local No. 243 (*infra*, pp. A-5-6). On December 9, 1982 Justice Sandra Day O'Connor, upon application of Local No. 243, ordered that the time for filing a petition for writ of certiorari be extended to and including January 11, 1983 (*infra*, p. A-81). The jurisdiction of the Court rests upon 28 U.S.C. §1254(a).

STATUTES INVOLVED

This case involves §203(d) of the Labor Management Relations Act, 1947, 29 U.S.C. §173(d), which provides:

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases."

The case also involves §301(a) of the Labor Management Relations Act, 1947, 29 U.S.C. '185(a), which provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

Teamsters Local No. 243 (hereinafter referred to as the "Union") is the collective bargaining representative for warehouse and service employees at five Detroit area facilities of Sears, Roebuck and Company (hereinafter referred to as "Sears"). This case arose when Sears subcontracted the work of ninety bargaining unit employees.

On January 4, 1979 Sears informed the Union that it had subcontracted out the work of the maintenance agreement sales department effective February 1, 1979. This resulted in ninety bargaining unit employees losing their jobs, about twelve percent of the bargaining unit. Thus, Sears' action substantially eroded the bargaining unit (*infra*, p. A-8). The subcontract also had the effect of undermining the wages and benefits provided for in the labor agreement. The maintenance agreement sales employees received $6.91 per hour in wages and a fringe benefit package equivalent to fifteen percent of their wages, or an overall economic package of $7.94 per hour. The subcontractor's employees were all part-time, were paid $4.00 per hour, and received no fringe benefits (p. A-60). Labor costs, according to Sears, are ninety percent of the total cost of the maintenance agreement sales operation (p. A-58).

The Union filed a grievance protesting the subcontract as a violation of the labor agreement, and the parties submitted the grievance to arbitration. The arbitrator held that Sears had violated the labor agreement and ordered Sears to terminate the subcontract and make the affected employees whole for lost earnings from the date of his award until their reinstatement (pp. A-67-68). The labor agreement provided that the arbitrator's decision would be final and binding.

In reaching his decision the arbitrator examined the labor agreement's language against the background of the numerous arbitrators' awards in subcontracting cases. The arbitrator

found, and the court of appeals did not dispute, that even where a labor agreement is silent concerning subcontracting, arbitrators hold that implicit in the labor agreement is a reasonableness limitation on subcontracting. The arbitrator then concluded that the language in the Union-Sears agreement should be interpreted as codifying the arbitral common law standard (p. A-45).

Although not required to do so, the arbitrator cited several factors which supported this interpretation. First, the language did not provide an explicit right to lay off employees by subcontracting (pp. A-44-45). Second, an interpretation which gave Sears carte blanche to subcontract whenever it was more economical led to a nonsensical result: for minimal cost savings Sears could eliminate the entire bargaining unit (pp. A-42-43). Third, a reasonableness requirement is a standard canon of contract interpretation (pp. A-45-46). Fourth, other arbitrators had interpreted similar language and reached the same conclusion (p. A-43).

Sears commenced an action in the district court to vacate the arbitrator's award. The Union counterclaimed for enforcement of the award. Both Sears' action and the Union's counterclaim had as their jurisdictional basis §301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185 (a). The district court vacated the arbitrator's award and the court of appeals affirmed the district court's judgment.

The court of appeals recognized that where a labor agreement is silent as to subcontracting, it is "accepted practice for arbitrators to infer a reasonableness limitation on subcontracting." The court of appeals also recognized that other arbitrators had interpreted similar language as codifying the reasonableness limitation. However, the court of appeals held that the award here should be vacated because: (1) the "weight of authority" of arbitrators was contrary, and (2) the case came within its "unambiguous language" exception to the deference normally accorded arbitrators' awards (pp. A-3-4).

REASONS FOR GRANTING THE WRIT

1. The Court Of Appeals Has Repeatedly Substituted Its Interpretation Of Labor Agreements For That Of Arbitrators, Thereby Undermining Arbitration As A Method Of Resolving Labor Disputes.

Since the *Steelworkers Trilogy*[1] it has become axiomatic that arbitration is the preferred method of labor dispute settlement. See, e.g., *Nolde Brothers, Inc.* v. *Local No. 358, Bakery and Confectionary Workers,* 430 U.S. 543 (1964); *John Wiley & Sons, Inc.* v. *Livingston,* 376 U.S. 543 (1964). An integral part of this federal policy is the strong presumption in favor of the enforcement of arbitration awards and the refusal of courts to substitute their interpretation of labor agreements for that of arbitrators. If courts regularly vacate arbitrators' awards, arbitration will lose the attribute of finality and therefore its value as a method of dispute resolution. In *United Steelworkers of America* v. *Enterprise Wheel & Car Corp., supra* at 596, the Court stated:

> "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards."

The Court clearly saw that if federal courts reviewed the merits of arbitrators' awards, it "would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final." *Id.* at 599.

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[1] *United Steelworkers of America* v. *American Mfg. Co.,* 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.,* 363 U.IS. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960).

The present case, however, is but one of a recent series of cases in which the court of appeals has substituted its interpretation for that of an arbitrator and vacated the arbitrator's award. See, e.g., *Grand Rapids Die Casting* v. *Local Union No. 159, UAW*, 684 F. 2d 413 (6th Cir. 1982); *Int'l Bhd. of Firemen and Oilers Local 935-B* v. *Nestle Co.*, 630 F. 2d 474 (6th Cir. 1980); *Storer Broadcasting Co.* v. *Am. Fed. of Television and Radio Artists*, 600 F. 2d 45 (6th Cir. 1979); *Detroit Coil Co.* v. *Int'l Ass'n of Machinists*, 594 F. 2d 575 (6th Cir. 1979); *General Drivers, Warehousemen and Helpers Local 89* v. *Hays & Nicoulin, Inc.*, 594 F. 2d 1093 (6th Cir. 1979); *Timken Co.* v. *Local Union No. 1123, United Steelworkers of America*, 482 F. 2d 1012 (6th Cir. 1973). Today arbitration awards are no longer final within the Sixth Circuit. When an arbitrator issues an award, it is only the beginning of a long and unpredictable process.

In its numerous decisions not to defer to arbitrators' interpretations of labor agreements, the court of appeals has relied upon its "unambiguous language" rule: whenever a court concludes that the "unambiguous language" of an agreement has a different meaning than an arbitrator gives it, a court need not defer to the arbitrator's interpretation of the agreement. This unambiguous language rule is no more than the "plain meaning" or *Cutler-Hammer* doctrine which the Court rejected in the *Steelworkers Trilogy*. *United Steelworkers of America* v. *American Mfg. Co., supra* at 567. The Court further stated:

> "Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for." *Id.* at 568.

An "unambiguous language" or "plain meaning" exception to the rule against judicial entanglement in the merits of arbitra-

tion awards inevitably emasculates the rule. Whenever a court is unhappy with the arbitrator's interpretation of a labor agreement, it is simplicity itself for the court to conclude that the arbitrator ignored the "plain meaning" of the contract language.[2]

This is precisely what has happened within the Sixth Circuit. One scholar examined the Sixth Circuit Court of Appeals' deviation from the *Steelworkers Trilogy* and concluded:

> "These new rules, as might have been expected, are leading to the overturning of arbitrators' awards, especially on the basis of 'plain' meaning in the contract — at least what a court, district or circuit, in disagreement with the arbitrator, deems to be plain meaning." Morris, *Twenty Years of the Trilogy: A Celebration,* Proceedings of the Thirty-Third Annual Meeting, National Academy of Arbitrators, 356, 370 (1981).[3]

In the *Steelworkers Trilogy* the Court intended that the federal courts should no longer become entangled in the merits of arbitration awards. The Court recognized that if the judiciary was free to substitute its interpretations of labor agreements for those of arbitrators, then arbitration would not long remain a viable method of dispute resolution. The court of appeals has departed from this central teaching of the *Trilogy.* This deviation threatens to fatally undermine arbitration as the method for resolving the thousands of disputes which occur each week in the American workplace.

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[2]3t. Antoine, *Judicial Review of Labor Arbitration Awards: A Second Look at Enterprise Wheel and its Progeny,* 75 Mich. L. Rev. 1137 (1977).

[3]For other scholarly criticism of the court of appeals' refusal to enforce arbitration awards, see Roumell, *Reversing the Arbitrator,* 61 Mich. B. J. 519, 543 (1982); Christensen, *Judicial Review: As Arbitrators See It,* Proceedings of the Twenty-Fifth Annual Meeting, National Academy of Arbitrators, 96, 106, 110-111 (1973).

2. A Conflict Exists Among The Courts Of Appeals With Respect To The Scope Of Review Of Arbitration Awards.

In *United Steelworkers of America* v. *Enterprise Wheel & Car Corp., supra,* the Court emphasized that the question of interpretation of the labor agreement is for the arbitrator. The arbitrator's award need only "draw its essence" from the labor agreement. *Id.* at 597.

However, a conflict has developed among the courts of appeals with respect to when an award "draws its essence" from the labor agreement. As noted above, the Sixth Circuit Court of Appeals has held that an award does not draw its essence from the agreement where a court interprets "unambiguous language" differently than the arbitrator. No other court of appeals has embraced this standard.

Most of the courts of appeals have held that an arbitration award should be enforced if it is derived in some rational manner from the labor agreement.[4] In particular, other courts of appeals have held that an arbitrator's award should be enforced even though the arbitrator's interpretation varies from the literal meaning of the agreement's language. In *F.W. Woolworth Co.* v. *Miscellaneous Warehousemen's Union Local No. 781,* 629 F. 2d 1204, 1215 (7th Cir. 1980), the court ordered enforcement of an arbitration award where the arbitrator, after examining the body of industrial law, rejected the literal meaning of the agreement's language. Similarly, in *Loveless* v. *Eastern Air Lines, Inc.,* 681 F. 2d 1272, 1278-1280 (11th Cir.

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[4]See, e.g., *Smith Steelworkers* v. *A.O. Smith Corp.,* 626 F. 2d 596, 599 (7th Cir. 1980); *Boise Cascade* v. *United Steelworkers of America,* 588 F. 2d 127, 129 (5th Cir. 1979); *Andros Compania Maritima* v. *Marc Rich Co.;* 579 F. 2d 691, 704 (2d Cir. 1978); *Amoco Oil Co.* v. *Oil, Chemical and Atomic Workers,* 548 F. 2d 1288, 1294 (7th Cir. 1977) *cert. denied* 431 U.S. 905 (1977); *N.F. & M Corp.* v. *United Steelworkers of America,* 524 F. 2d 756, 759 (3d Cir. 1975).

1982), the court ordered enforcement of an arbitrator's award even though his interpretation of the agreement was contrary to superficially clear and unambiguous contract language. In *Johnson Bronze Co.* v. *UAW*, 621 F. 2d 81, 83 (3d Cir. 1980), the arbitrator imposed a reasonableness requirement upon a company's decision to recall from layoff. The court held that since this requirement was not totally unsupported by principles of contract construction, the arbitrator's award should be enforced. Each of these three appellate decisions conflict with the "unambiguous language" rule applied by the Sixth Circuit to overturn the arbitration award here and in a series of other cases.

Unlike the other courts of appeals the Sixth Circuit has failed to heed the Court's admonition that the federal courts should not substitute their judgment for the arbitrator's on the merits of an award. This has led one scholar to describe the Sixth Circuit as "revisionist" and a "maverick" among the courts of appeals.[1] Its broad involvement in the merits of arbitration awards and its refusal to defer to arbitrators' interpretations of labor agreements cannot be reconciled with the decisions of other courts of appeals. Because a conflict exists among the courts of appeals with respect to the standard for review of labor arbitration awards, the Court should grant this petition.

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[1]Morris, *supra* at 356, 368-370.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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